

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 1:145

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 1:145 was held on September 21, 2012 at 9:00 a.m. in the Health Services Auditorium of the Health Services Building at 275 East Main Street in Frankfort, KY.

(2) The following individuals spoke at the hearing:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Steve Shannon, executive director	Kentucky Association of Regional Mental Health/Mental Retardation Programs, Inc. (KARP)
Jean Russell, vice president of developmental services	Seven Counties Services, Inc.; Louisville, KY

(3) The following individuals submitted written comments regarding 907 KAR 12:010:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
William S. Dolan, staff attorney supervisor	P & A
Tara Sorgi Pelfrey, board certified behavior Analyst	Louisville, KY
Steve Shannon, executive director	Kentucky Association of Regional Mental Health/Mental Retardation Programs, Inc. (KARP)
Shannon Ware, president and CEO	Bluegrass Regional Mental Health-Mental Retardation Board, Inc.; Lexington, KY
Jean Russell, vice president of developmental services	Seven Counties Services, Inc.; Louisville, KY

(4) The following individuals from the promulgating administrative body responded to the comments received regarding 907 KAR 1:145:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Dr. Stephen Hall, commissioner	Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID)

Claudia Johnson, director

DBHDID, Division of Developmental
and Intellectual Disabilities
Department for Medicaid Services

Stuart Owen, Regulation Coordinator

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Developmental Disability Definition

(a) Comment: William S. Dolan, staff attorney supervisor of P & A, stated, "We urge the Cabinet to change the definition of "developmental disability" to clarify that individuals with developmental disabilities can access SCL services. The proposed definition allows the Cabinet to continue its practice of excluding anyone who has a developmental disability from SCL because it interprets the "an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability" to mean an SCL applicant must have an IQ of approximately 70 or below. This interpretation contravenes Kentucky's SCL statute, KRS 205.6317, which specifically states SCL is for individuals with either intellectual or developmental disabilities.

We suggest using the Michelle P. developmental disability definition. See 907 KAR 1:835 § 1(16). By using the same definition, Kentucky's ID/DD waivers will be consistent and Michelle P. recipients with developmental disabilities won't have to fear being cut-off from SCL residential services when the need arises just because they are not diagnosed as ID. We are mystified as to why the Cabinet would create a bifurcated ID/DD waiver system that, for lack of a better phrase, abandons the DD population when they need residential waiver services.

(b) Response: The SCL waiver and Michelle P waiver, as approved by the Centers for Medicare and Medicaid Services (CMS), are not identical. Amending the definition of developmental disability as suggested would alter the intent of the program and would require CMS approval. DMS is not amending the definition as requested.

(2) Subject: Public Hearing

(a) Comment: Tara Sorgi Pelfry, a board certified behavior analyst, wrote the following regarding the public hearing:

"I found the public hearing to be quite discouraging. Despite the requirement to RSVP, the number of guests who squeezed into the designated room exceeded the Room's Fire Code by over 100 people and wasn't accessible to person's in wheelchairs. The majority and remainder of those in attendance stood in the hallway the first hour until the room was made larger after public out roar. Even after the room was enlarged, the placement of the podium and microphone did not permit approach by those in wheelchairs, causing the hearing coordinators to hold the microphone while individuals with disabilities spoke from a different area of the room. Does the Cabinet plan to adhere to fire safety codes and ADA accessibility codes during future meetings in the

state's Human Resources Building when addressing future issues with the SCL waiver?"

(b) Response: Yes, it does.

(3) Subject: General Support for the Regulations

(a) Comment: Wade T. Mullins and Wendy Wheeler-Mullins, parents of a daughter with autism, stated, "We approve of the proposed regulations for the 907 KAR 1:145, 907 KAR 1:155, 907 KAR 12:010, and 907 KAR 12:020 for the Supports for Community Living Services. The proposed regulations for the SCL Waiver are a positive step for individuals with developmental and intellectual disabilities in Kentucky."

(b) Response: Thank you for your support.

(4) Subject: Let Participants Choose Which Regulations Through Which To Receive SCL Services

(a) Comment: Steve Shannon, executive director of The Kentucky Association of Regional Mental Health/Mental Retardation Programs, Inc, (KARP), stated (and Shannon Ware, president and CEO of Bluegrass Regional Mental Health-Mental Retardation Board, Inc., supported Mr. Shannon's comments), stated, "It is recommended individual participants be provided the opportunity to fully have a person centered thinking and philosophical system of services and supports by empowering them to be able to select the pair of regulations from which they shall receive services and supports: either 907 KAR 1: 145 & 155 or 907 KAR 12:010 & 020. This can be accomplished by deleting the language referencing the transition from 907 KAR 1:145 to 907 KAR 12:010 based upon the individual's birth month (page 1 & 2). Also, by including language indicating the participant shall be able to select the pair of regulations from which their respective services and supports will be selected, provided and monitored.

The proposed transition plan based upon participant's month of birth is not a phase-in plan from an individual participant perspective since they would not have a choice but to transition to the new regulations (907 KAR 12:010 & 020)."

Mr. Shannon also stated, "I really do believe, if you want to make a significant change to public policy, and that's what this is, this regulation is a significant change, you ought to run parallel systems, side by side. Let the individual decide which service they thing best meets their needs.

We want to go that old traditional 145 and 155 regs or the new 010, 020, let them make that decision. It's truly a participant driven model on what they get to do. And, then they pick their choices.

You also--your basic, you know, independent, dependent variable. Two groups, paired

side by side, what happens? What are the outcomes? I think that's really a way to get to a place where individuals get to pick what they want to have happen.”

(b) Response: DBHDID and DMS have established a system that was approved by the Federal Centers for Medicaid and Medicare (CMS) that will allow people to transition from old to new services during the month of their birthday. This will provide time for people to work with their chosen case manager and person centered team to develop a plan of care that is based on needs identified in the Supports Intensity Scale (SIS) assessment and allow certified provider agencies to shift their business plans to changes in rate structure that promote community employment and participation in community life.

(5) Subject: Transition

(a) Comment: Jean Russell, vice president of developmental services, Seven Counties Services, Inc., stated, “Transitioning to new wavier based on the birth month of the consumer presents a significant administrative burden to providers. Please see comments referenced for 907 KAR 1:155.”

Below are the Seven Counties Services, Inc.’s comments submitted for 907 KAR 1:155 regarding this same subject:

“This transition time for consumers to move to the new SCL waiver is based on the consumer’s birth month. This transition process presents a significant administrative burden to providers. Providers do not have sophisticated billing systems which will allow for two different rates for the same ‘procedure’ code. Additionally, provider case managers will have to track each individual regarding which services are available to them and which are not yet available to them due to this transition period.

Proposed recommendation SCS recognizes the challenge inherent in transitioning the large number of existing eligible consumers and the requirement for completing a new assessment on each consumer to base a POC. Yet, we would recommend the state consider changing this transition period based on alphabet, region, or some other acceptable logistic that would enable the state and the providers to complete the Transition for all eligible consumers no later than June 30, 2013.”

(b) Response: DBHDID and DMS have established a system that was approved by the Federal Centers for Medicaid and Medicare (CMS) that will allow people to transition from old to new services during the month of their birthday. This will provide time for people to work with their chosen case manager and person centered team to develop a plan of care that is based on needs identified in the Supports Intensity Scale (SIS) assessment and allow certified provider agencies to shift their business plans to changes in rate structure that promote community employment and participation in community life.

(6) Subject: Clarification

(a) Comment and (b) Response: DMS is amending the necessity, function, and conformity paragraph; Section 3. Non-CDO Provider Participation; Section 6. Incident Reporting Process; Section 7. SCL Waiting List; and Section 8. Use of Electronic Signatures to clarify that the policies and requirements established in 907 KAR 12:010 on those subjects apply to all SCL waiver service providers and recipients. DMS is deleting the policies and requirements currently stated on those subjects in this administrative regulation from this administrative regulation.

(7) Subject: Acronym Correction

(a) Comment and (b) Response: DMS is making three (3) amendments to establish that the correct acronym for intermediate care facility for an individual with an intellectual or developmental disability is ICF-IID. ICF-IID is the acronym used by the Centers for Medicare and Medicaid Services (CMS) who approved this program and provide federal funding for this program.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 1:145 and is amending the administrative regulation as follows:

Page 1
Necessity, Function, and Conformity paragraph
Line 19

After “establishes the”, insert the following:
covered service policies and requirements

Delete “coverage provisions”.

Page 2
Necessity, Function, and Conformity paragraph
Line 2

After “KRS 205.5606”, insert the following:
until individuals transition to receiving services via 907 KAR 12:010

Page 2
Necessity, Function, and Conformity paragraph
Line 2

After “policies”, insert the following:

and requirements established in Section 4 of this administrative regulation

Page 2

Necessity, Function, and Conformity paragraph

Line 9

After "established in", insert "**Section 4**".

Page 2

Necessity, Function, and Conformity paragraph

Line 11

After "recipient", insert the following:

Additionally, the consumer directed option policies and requirements established in Section 5 of this administrative regulation shall apply to individuals receiving consumer directed option services until the individuals transition to receiving services pursuant to 907 KAR 12:010 and to providers of consumer directed option services to individuals receiving consumer directed option services pursuant to this administrative regulation. The SCL recipient, eligibility, enrollment, and termination policies and requirements established in Section 2 of this administrative regulation shall also apply to individuals until individuals transition to applying for or receiving services pursuant to 907 KAR 12:010.

Page 3

Section 1(12)

Line 19

After "(12)", insert the following:

"DDID" means the Division of Developmental and Intellectual Disabilities in the Department for Behavioral Health, Developmental and Intellectual Disabilities.
(13)

Page 3

Section 1(13)

Line 20

Renumber this subsection by inserting "(14)" and by deleting "(13)".

Page 4

Section 1(14)

Line 9

Delete subsection in its entirety.

Page 5

Section 1(18)

Line 6

After "(18)", insert "ICF-IID".

Delete "ICF ID".

Page 9

Section 2(1)(a)

Line 10

After “(a)”, delete the following:

Be placed on the SCL waiting list in accordance with Section 7 of this administrative regulation;

(b)

Page 9

Section 2(1)(b)

Line 12

Delete “(b)”.

Page 9

Section 2(1)(c)

Line 14

Renumber this paragraph by inserting “(b)”. and by deleting “(c)”.

After “Meet”, insert “ICF-IID”.

Delete “ICF-MR-DD”.

Page 9

Section 2(1)(d)

Line 15

Renumber this paragraph by inserting “(c)”. and by deleting “(d)”.

Page 9

Section 2(1)(e)

Line 16

Renumber this paragraph by inserting “(d)”. and by deleting “(e)”.

Page 10

Section 2(2)(c)

Line 14

After “An”, insert “ICF-IID”.

Delete “ICF-MR-DD”.

Page 10

Section 2(4) and (5)

Lines 19-22

After “(4)”, delete the following:

The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be Expected to exceed the cost of ICF-MR-DD services.

(5)

Page 12

Section 2(5)(d)

Line 8

After “meet”, insert “ICF-IID”.

Delete “ICF-MR-DD”.

Page 12

Section 2(6)(a)

Line 12

After “department, and”, insert “DDID”.

Delete “DMR”.

Page 12

Section 2(6)(b)

Line 19

After “and to”, insert “DDID”.

Delete “DMR”.

Page 13

Section 2(7)

Line 12

After “and to”, insert “DDID”.

Delete “DMR”.

Page 13

Section 3

Line 17

After “Participation.”, insert the following:

The SCL waiver service provider policies and requirements established in 907
KAR 12:010 shall apply to all SCL waiver service providers.

Page 13

Section 3(1) through (18)

Line 17 through

Page 29

Line 11

Delete subsections (1) through (18) in their entirety.

Page 36

Section 4(2)(e)15.b.

Line 20

After “an”, insert “ICF-IID”.

Delete “ICF-MR-DD”.

Page 53

Section 5(13)(f)

Line 19

After “an”, insert “ICF-IID”.
Delete “ICF-MR-DD”.

Page 54
Section 6
Line 11

After “Process.”, insert the following:

The incident reporting policies and requirements established in 907
KAR 12:010 shall apply to all SCL waiver service providers and participants.

Page 54
Section 5(1) through (4)
Line 11 through
Page 56
Line 18
Delete subsections (1) through (4) in their entirety.

Page 56
Section 7
Line 19

After “List.”, insert the following:

The SCL waiting list policies and requirements established in 907 KAR 12:010
shall apply to all individuals on the SCL waiting list or attempting to be placed on
the SCL waiting list.

Page 56
Section 7(1) through (21)
Line 19 through
Page 62
Line 14
Delete subsections (1) through (21) in their entirety.

Page 62
Section 8
Line 15

After “Signatures.”, insert the following:

The electronic signature policies and requirements established in 907 KAR 12:010
shall apply to all SCL waiver service providers.

Page 62
Section 8(1) through (3)
Line 15 through
Page 63
Line 9
Delete subsections (1) through (3) in their entirety.

Page 63
Section 9(1)
Line 10

After "established in", insert "Section 4 of".